

REMARKS

Petition for Extension of Time Under 37 CFR 1.136(a)

It is hereby requested that the term to respond to the Examiner's Action of August 3, 2010 be extended one month, from November 3, 2010 to December 3, 2010.

The Commissioner is hereby authorized to charge the RCE filing fee, the extension fee, and any additional fees associated with this communication to Deposit Account No. 50-4364.

In the Office Action, the Office indicated that claims 1 through 27 are pending in the application and the Office rejected all of the claims.

Preamble

In the Advisory Action mailed on November 12, 2010, the Office indicated that the phrase "network operator applying parameters" was not given any patentable weight due to its occurrence in the preamble of claim 1, and thus Applicant's arguments directed to the lack of any teaching or suggestion in the prior art of the applying of the parameters by the network operator were not given consideration by the Office. While Applicant submits that it is clear, from a reading of the claims in light of the specification, that the steps of assigning parameters relate back to the application of the parameters by the network operator, Applicant, by this amendment, amends independent claim 1 to specifically recite that the parameters are applied via the network operator. Accordingly, the Office is respectfully requested to give patentable weight to the this aspect of the invention and reconsider the rejection in view of Applicant's previously-submitted arguments. As a courtesy to the Office, these arguments are resubmitted, below.

Rejections under 35 U.S.C. §§102 and 103

On page 2 of the Office Action, the Office rejected claims 1-9, 17, 19, and 24-27 under 35 U.S.C. §102(a) as being anticipated by PCT Publication No. WO 01/78319 to Ferguson et al. On page 8 of the Office Action, the Office rejected claims 10-16, 18, and 20-23 under 35 U.S.C. §103(a) as being unpatentable over Ferguson in view of European Patent No. EP 0794646 to Hild.

The Cited Prior Art Does Not Anticipate the Claimed Invention

Claim 1 currently recites creating a change log that lists all objects to be replicated between a mobile device and a server, and assigning first and second parameters, which are *applied by a network operator*. The first claimed parameter is a single weight associated with each object that defines how urgently that object needs to be replicated. The second claimed parameter is a threshold that is a function of time.

Regarding the first claimed parameter, in the Office Action, the Office contends that the first parameter of claim 1, a single weight associated with each object that defines how urgently that object needs to be replicated, is disclosed in the list of criteria given at page 49, lines 5 to 17 of Ferguson. However, it is submitted that only three of these criteria in Ferguson are “network parameters received from the base station”. These are (see Ferguson, page 49, lines 14 to 17):

- (i) a duty cycle based on activity level;
- (ii) the number of other mobiles currently using the same base station; and
- (iii) the purchased support level of network airtime.

None of these three *network parameters* are (or could be construed as) a single weight associated with each object that defines how urgently that object needs to be replicated as is currently claimed; rather they are characteristics of the network. For this reason alone, the claimed invention is novel over (and non-obvious in view of) Ferguson.

Next, regarding the second claimed parameter, the Office further contends that Ferguson discloses, at page 52, lines 20 to 22, a network operator assigning “a threshold that is a function of time, with the single weight of each object being locally compared to the threshold at a given time and the outcome of the comparison determining whether the object is sent for replication or not at that time”, as claimed in claim 1.

The cited passage of Ferguson recites that “the sending logic of the software will have certain criteria used to decide whether to send immediately”. Thus, these criteria are a part of the sending logic of the software and are not applied *by a network operator*, in contrast to the first and second parameters of claim 1. Furthermore, there is no disclosure in Ferguson of the “certain criteria” being functions of time, nor of the single weight of each object being locally compared to the threshold at a given time and the outcome of the comparison determining whether the object is sent for replication or not at that time. Instead, the sending logic of the software in Ferguson simply checks if the current time is considered to be off-peak hours and, if so, sends the data item immediately.

Thus, Ferguson does not disclose either of the first and second parameters as claimed in claim 1 and claim 1 is novel. By virtue of the dependency, claims 2 to 27 are also novel.

A Prima Facie Case of Obviousness Has Not Bee Established

All the remaining claims are dependent on claim 1 and therefore are novel over Ferguson. The addition of Hild does not teach or suggest the elements above that are identified as not being found in Ferguson (and the Office has not asserted that it does). Thus, all of the claims patentably define over Ferguson and/or Hild, both alone or in combination.

Accordingly, the Office is respectfully requested to reconsider and withdraw the rejection of claims 10-16, 18, and 20-23 under 35 USC §103.

Conclusion

The present invention is not taught or suggested by the prior art. Accordingly, the Office is respectfully requested to reconsider and withdraw the rejection of the claims. An early Notice of Allowance is earnestly solicited.

The Commissioner is hereby authorized to charge the RCE filing fee, the extension fee, and any fees associated with this communication to applicant's Deposit Account No. 50-4364.

Respectfully submitted

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Date

/Mark D. Simpson/
Mark D. Simpson, Esquire
Registration No. 32,942

SAUL EWING LLP
Centre Square West
1500 Market Street, 38th Floor
Philadelphia, PA 19102-2189
Telephone: 215 972 7880
Facsimile: 215 972 4169
Email: MSimpson@saull.com